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FEDERAL COMMUNICATIONS COMMISSION
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BEFORE THE

Federal Communications Commission

ORIGINAL
FILE

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In the Matter of: :

GLEN FALLS, NEW YORK :

Docket No. 92-6

-----x

DATE: August 4, 1992

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BEFORE THE
FEDERAL COMMUNICATIONS COMMISSION

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In the Matter of: :
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GLENS FALLS, NY : Docket No. 92-6
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VOLUME 4

The above-entitled matter came on for Hearing,
pursuant to Notice, before Richard L. Sippel,
Administrative Law Judge, at 2000 L Street, N.W., Courtroom
No. 2, Washington, D.C., Tuesday, August 4, 1992, at 9:30
a.m.

APPEARANCES:

On Behalf of Normandy Broadcasting Corp.:

CHRISTOPHER P. LYNCH

On Behalf of Lawrence N. Brandt:

DAVID TILLOTSON
Arent, Fox, Kinter, Plotkin and Kahn
1050 Connecticut Avenue, N.W.
Washington, D.C. 20036

On Behalf of Chief, Mass Media Bureau:

GARY P. SCHONMAN
FCC
2025 M Street, N.W., Suite 7212
Washington, D.C. 20954

I N D E XWITNESSESVOIR DIRE

Christopher P. Lynch

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EXHIBITSIDENTIFIEDRECEIVEDREJECTED

Brandt 1	233	235	
Brandt 2	241	241	
Normandy 1	246	246	
Normandy 2	247	247	
Normandy 3	252		
Normandy 4	350		350
Normandy 5	248	248	
Normandy 6	352	414	
Normandy 7	415		417
Normandy 8		434	
Normandy 9	480	480	
Normandy 10	486		

P R O C E E D I N G S

(9:32 a.m.)

JUDGE SIPPEL: This proceeding with come
to order.

I'm going to -- this is the scheduled
admissions session. This is the commencement of the
formal hearings in this case. And I'm going to first
have the parties and their counsel identify themselves
for the record, please.

On behalf of the renewal applicant, Mr.
Lynch.

MR. LYNCH: Christopher P. Lynch,
President of Normandy Broadcasting Corporation, the
applicant.

JUDGE SIPPEL: All right.

And on behalf of the challenging
applicant, Mr. Brandt.

MR. TILLOTSON: David Tillotson and Cathy
Frankel (phonetic) of Arent, Fox, Kinter, Plotkin and
Kahn.

JUDGE SIPPEL: And on behalf of the -- the
Bureau.

MR. SCHONMAN: Good morning, Your Honor.

Gary P. Schonman and Paulette Layden
(phonetic) on behalf of the Chief, Mass Media Bureau.

1 JUDGE SIPPEL: Good morning to everyone.

2 We've got a good deal of work to cover
3 today. And I hope when I say "today" that it can be
4 resolved today. I have preliminarily reviewed the
5 documents that are sought to be introduced today and a
6 lot of it's going to depend on the cooperation of the
7 parties and counsel in terms of making this as --
8 facilitating the introduction or coming up with
9 stipulations or some -- whatever it might take to get
10 the job done.

11 However, I am prepared to recess and pick
12 up again tomorrow, if that's necessary.

13 Now, let me just say that, at the outset,
14 there are some things that we can move into the record,
15 it seems to me, pretty quickly, one of which, of
16 course, would be the Brandt representation that it
17 doesn't seek integration. And I think we can decide
18 very quickly up front on some of these witnesses who
19 won't be called for cross examination. This might not
20 be the most -- the most orderly -- it may not appear to
21 be the most orderly way of doing it, but I think
22 getting things that are not in contention resolved up
23 front is a -- makes everybody feel like they're
24 accomplishing something; and then we can spend time as
25 we have to on the more difficult issues.

1 Let me say something further, too, with
2 respect to how I see this case being tried.

3 It is clear, Mr. Tillotson, that your
4 client does not seek integration credit.

5 MR. TILLOTSON: Correct.

6 JUDGE SIPPEL: It is equally clear, of
7 course, that Mr. Lynch does seek integration credit.
8 And without getting into the technicalities of the
9 admissibility of the evidence, this type of thing --
10 which is very important -- but assuming that he gets
11 integration, you don't have integration, that's --
12 aside from the disqualifying issue in the Skidelsky
13 case, that pretty much -- that's pretty much the end of
14 the story.

15 MR. TILLOTSON: No, Your Honor. You
16 overlooked the fact that Mr. Lynch -- although his
17 evidence, I don't believe reflects it -- is the owner
18 and operator of an AM station which he has not proposed
19 to divest in Glens Falls, New York.

20 Diversification takes precedence over
21 integration. Mr. Lynch, assuming he came away with 100
22 percent integration, Mr. Brandt would be without any
23 diversification demerit, where the station is in the
24 same market -- full-time radio station -- Mr. Brandt
25 would win. Mr. Lynch would lose.

1 JUDGE SIPPEL: All right. It's that
2 simple.

3 MR. TILLOTSON: It's that simple.

4 JUDGE SIPPEL: I follow you. I follow
5 you.

6 Mr. Brandt does not have any disqualifying
7 diversification holdings? He does have some --

8 MR. TILLOTSON: The only thing he has is
9 some MDSs around the country, which I don't believe the
10 Commission's even ever held as being a mass media
11 interest; but they're not in the same market.

12 JUDGE SIPPEL: All right.

13 MR. TILLOTSON: I don't believe there's
14 any case law that suggested an MDS operation is a
15 diversification.

16 JUDGE SIPPEL: All right. Well, that may
17 put a little different -- a little different twist in
18 terms of how I thought to approach this from an
19 evidentiary standpoint.

20 But what I'm trying to get to is the -- is
21 your request for cross examination and how that's going
22 to get handled.

23 MR. TILLOTSON: I didn't receive any
24 objection to it --

25 JUDGE SIPPEL: Well --

1 MR. TILLOTSON: Was there one filed?

2 JUDGE SIPPEL: Not to my knowledge; but
3 it's more complicated than just that. It goes into the
4 question of where is a cross examination going to be
5 conducted and is it really necessary in light of what
6 this case is really about.

7 You were turned down on a motion for
8 summary decision for reasons that were stated in that
9 rule; but the -- we've been on the record on this on a
10 number of occasions. And I'm going to say it in a very
11 cryptic fashion, but the findings of Judge Kuhlman are
12 here in this case. And that's what has to be lived
13 with by everybody who's associated with this case. And
14 we're not going to permit -- I'm not going to permit
15 that to be collaterally attacked.

16 Get into the issue of exculpatory
17 evidence, we've been through that a number of ways,
18 we're going to be back into that again, I understand.

19 But, basically, that's -- that is the
20 issue that's driving this case, as I see it.

21 And that being the case -- and, then,
22 whatever decision is made here is going to go up to the
23 Review Board, no doubt, by whoever here doesn't like
24 what I do with it. And the Review Board said that it
25 would take a look at the merits of what was done in the

1 Skidelsky case at that point.

2 So what I'm trying -- what I'm saying that
3 is -- I'm trying to get to this situation of the --
4 what I think to be extensive cross examination that you
5 would be contemplating. I don't say that in a critical
6 sense. I'm just simply saying it in terms of a
7 quantitative sense and the costs of this case and the
8 rights of Mr. Lynch to have cross examination of public
9 witnesses conducted outside of Washington, D.C. Get
10 into scheduling. We get into traveling. And I asked
11 the question, you know, to what end?

12 MR. TILLOTSON: -- comment on that?

13 JUDGE SIPPEL: Please do.

14 MR. TILLOTSON: I think we really -- I
15 noted a long list, based on the fact that if I didn't
16 note them I didn't get them, and I had the Exhibits, at
17 this point in time -- there's no ruling on whether the
18 written testimony is relevant or admissible.

19 My own guess is that if we go through the
20 Exhibits that we can probably wrap up most of it on the
21 grounds that it's not relevant or admissible.

22 Insofar as Mr. Lynch is making a case,
23 either for his good character in exculpation, based on
24 broad statements from individuals in the community --
25 either exculpation or his renewal expectancy, the

1 quality of his station's programming -- based on
2 witnesses in the community, I am entitled to find out
3 what they really know. And if you look at the
4 statements, they are not very specific.

5 Now, we could argue and you could say,
6 "Well, it really goes to -- you know -- I'm not going
7 to give that much weight," but if you're going to let
8 it into evidence at all -- going to have an
9 accumulation of 10 public witnesses all saying that Mr.
10 Lynch is the saint of Glens Falls, New York, and his
11 radio station, as they say, is the best radio station
12 in the area and it does more than any other radio
13 station, I have a right to ask him, "On what basis do
14 you say that?" and to cross examine him on his facts.

15 And that's why I pick the people that say
16 those kinds of things and I pick them, though, with the
17 belief that when we go through them some of the
18 statements are not sworn, some of them are old, some of
19 them -- many of them talk only, really, about WWSC.
20 I'm not clear from looking at them whether they're
21 intended as exculpatory to say that he's a great man
22 and that somehow because of his great service to the
23 community he should be mitigated or whether they're
24 here for renewal expectancy.

25 If they're here for renewal expectancy, I

1 think many of them go out right away, because there's
2 no specific information about programming on a station.

3 So I think in order to determine who we
4 get to cross examine, we're going to need to find out
5 what Exhibits go in -- you know, address them one at a
6 time.

7 JUDGE SIPPEL: All right. I hear what
8 you're saying. And I was expecting that kind of an
9 analysis, as we go down through here. I'm just trying
10 to get some -- I'm trying to let you know up front how
11 I feel about this case, where I feel the most
12 significant aspects of it are in terms of coming to a
13 decision as rapidly and as efficiently and as
14 economically as we can.

15 Everybody -- subject, of course, to
16 everybody getting their rights to a fair hearing. That
17 goes without saying, too.

18 KQED, for example, says -- I think it's --
19 I mean, it says the meritorious program, it does not
20 mitigate serious deliberate misconduct.

21 So I'm hoping we're not going to have to
22 spend a lot of time arguing about mitigation of --
23 mitigation evidence via broadcasting as opposed to
24 exculpatory evidence, which -- there are some things in
25 these documents that may get into that. Again, that's

1 for another time, another subject for discussion.

2 But I -- just picking up on your
3 illustration.

4 MR. TILLOTSON: But there's a third -- and
5 that is assuming that -- for whatever reason -- you or
6 the Review Board determined that Mr. Lynch is not
7 disqualified, the fundamental question, then, is going
8 to turn on whether there's enough evidence of
9 programming quality to get a renewal expectancy. And,
10 therefore, insofar as there's material that's being
11 relied on for that basis, I can't treat that -- well,
12 it's really not that important because it's going to go
13 off on the other issue.

14 JUDGE SIPPEL: I understand what you're
15 saying. And that's why I'm trying to feel exactly what
16 you're --

17 MR. TILLOTSON: Right.

18 JUDGE SIPPEL: -- views are at this point,
19 in a general way.

20 Does the Bureau have anything on this, Mr.
21 Schonman?

22 MR. SCHONMAN: Well, I would agree with
23 Mr. Tillotson to the extent that we do have to go
24 through the Exhibits and determine the extent to which
25 the statements by these individuals are relevant and

1 admissible. And that will determine, by and large,
2 which individuals Mr. Tillotson would like to cross
3 examine.

4 JUDGE SIPPEL: All right. All right.

5 All right. Well, let's get on with the
6 documents. That's what we're here for.

7 As I say, because of -- I think it's just
8 logical to do it this way -- I'm going to start with
9 the --

10 I'm sorry. Mr. Lynch, I didn't ask you
11 for any comment on this. Do you have anything you want
12 to say about this subject?

13 MR. LYNCH: Thank you, Your Honor.

14 JUDGE SIPPEL: I haven't been deliberately
15 trying to cut you out, because I'm trying to focus on
16 the people who are going -- what I think are going to
17 make more work than I thought might otherwise be
18 necessary.

19 But you go ahead and say something if you
20 want to.

21 MR. LYNCH: Very simply, I took a lot of
22 time to try to separate the various documents as far as
23 integration, as far as programming support and as far
24 as testimonials from the community. Obviously, I
25 believe every page in that should be admitted as

1 evidence. And each one, I think, speaks very
2 specifically to my --

3 JUDGE SIPPEL: All right. Let me ask you
4 this: Did you put this together? When I say, "this,"
5 I mean your package of proposed Exhibits. Did you put
6 this together with the assistance of counsel?

7 No. You're saying no.

8 MR. LYNCH: No, Your Honor.

9 JUDGE SIPPEL: All right. And do you have
10 any objection to me receiving evidence really out of
11 turn or receiving evidence from Mr. Brandt before I
12 receive it from you? Because he's only got really one
13 page of a document that's going to come into the
14 record. Do you have any objection to that?

15 MR. LYNCH: None whatsoever.

16 JUDGE SIPPEL: And my procedures here
17 today?

18 MR. LYNCH: None.

19 JUDGE SIPPEL: Okay. Let's start, then,
20 with the testimony of Lawrence N. Brandt, which has
21 been pre-marked, "Brandt Exhibit No. 1." Does the
22 Reporter have a copy of that?

23 MR. TILLOTSON: Not yet, Your Honor.

24 JUDGE SIPPEL: All right.

25 MR. TILLOTSON: And, Your Honor, if I may,

1 we also -- pursuant -- in your order you indicated that
2 any documents that we would want official notice of
3 should be also bound or made part -- you know -- and
4 marked and so on. And so we have one document that we
5 -- I'd like to identify at this time as Brandt Exhibit
6 2.

7 JUDGE SIPPEL: Well, let's start with 1.

8 MR. TILLOTSON: Okay.

9 JUDGE SIPPEL: Let's take this in -- you
10 know --

11 MR. TILLOTSON: Okay. I have -- put
12 together in a binder -- that's what I say -- I haven't
13 given it to the Reporter yet, but I'll give her -- and
14 then we'll talk about what they are.

15 JUDGE SIPPEL: Do I have a copy?

16 MR. TILLOTSON: You will have a copy -- I
17 had made a set of everything --

18 JUDGE SIPPEL: All right. Why don't you
19 distribute -- Let's go off the record while you
20 distribute the sets and then we'll go back on and take
21 them one at a time.

22 (Off the record).

23 JUDGE SIPPEL: On the record.

24 MR. TILLOTSON: I'd like to have marked
25 for identification Brandt Exhibit 1, which is a one-

1 page Exhibit, which is the direct testimony of Mr.
2 Lawrence Brandt.

3 JUDGE SIPPEL: All right. The Reporter
4 will so mark that document as Brandt Exhibit No. 1, for
5 identification.

6 (The item referred to
7 was marked for
8 identification as
9 Brandt Exhibit No. 1.)

10 MR. TILLOTSON: And I'd like to move its
11 admission.

12 JUDGE SIPPEL: Any objection?

13 MR. LYNCH: This is not the document that
14 I had served on me. I'd object. We're supposedly
15 going to be very strict as far as admitting direct
16 case. The document that was faxed to me was unsigned,
17 was undated and I don't believe it should be admitted
18 into evidence.

19 JUDGE SIPPEL: Well, do you see any
20 difference between what's on Brandt Exhibit 1? It's a
21 one-page document. It's dated July 13, appears to have
22 the signature of Mr. Brandt.

23 MR. LYNCH: This is a different document
24 than the one that was served on me.

25 JUDGE SIPPEL: Where do you see the

1 difference?

2 MR. LYNCH: My document was -- you know --
3 it was undated and it was unsigned. It's my belief, as
4 of the submission of these -- you know -- our ability
5 to change documents, you know, ceased as of that time.

6 JUDGE SIPPEL: Well, but this is a one-
7 page document and you're able to certainly do a
8 comparison, a line-by-line comparison as to whether or
9 not there's been anything changed. Mr. Tillotson is a
10 practicing attorney here in Washington, I think,
11 certainly, his vouching for this --

12 MR. TILLOTSON: I think Mr. Lynch's only -
13 - I think Mr. Lynch is not questioning the substance.
14 I think he's only questioning the fact that what we
15 faxed to him on that day -- and I don't recall whether
16 we'd gotten back the signed copy of the testimony or
17 not, but his objection, I believe, is simply it was
18 faxed to him, may not have been -- is the same piece of
19 paper, but it did not have the signature and the date.

20 JUDGE SIPPEL: Is that true? Is that what
21 -- Is that your objection?

22 MR. LYNCH: Yes. I believe we're bound by
23 -- you know -- what was served on each other as of the
24 date it was served.

25 JUDGE SIPPEL: All right. Well, that's --

1 I'm going to overrule that objection as just -- as
2 being over-technical. It's -- you may be technically
3 correct, but I'm not going to hold out a piece of
4 evidence for that reason.

5 Mr. Schonman.

6 MR. SCHONMAN: -- no objection, Your
7 Honor.

8 JUDGE SIPPEL: All right, then, the
9 objection of Normandy is overruled. Exhibit 1 is
10 received in evidence at this time on behalf of Lawrence
11 N. Brandt.

12 (The item referred to
13 having been previously
14 marked for
15 identification as
16 Brandt Exhibit No. 1,
17 was received in
18 evidence.)

19 MR. TILLOTSON: Your Honor --

20 JUDGE SIPPEL: Yes, you have an Exhibit 2.

21 MR. TILLOTSON: My Exhibit 2, Your Honor,
22 is -- request official notice of the fact that Normandy
23 Broadcasting Corporation is the licensee of Station
24 WWSC and there has been no divestiture proposal or
25 commitment in this proceeding by Normandy or Mr. Lynch.

1 And what the Exhibit consists of is a copy of the FCC
2 license for WWSC and a copy of what they call the "FAIR
3 (phonetic) Report," reflecting that Normandy
4 Broadcasting Corporation is still the owner of the
5 station. And at the top, on the second page of the
6 FAIR Report, it was written, and, I believe, by the
7 Commission that this was current -- 7/30/92, meaning it
8 was taken out of the 7/30/92 version of the FAIR Report
9 in the Public Reference Room.

10 JUDGE SIPPEL: All right. Does that, Mr.
11 Lynch, does counsel's description -- is it
12 substantially accurate in terms of what the document
13 reflects?

14 MR. LYNCH: Best of my knowledge, yes,
15 Your Honor.

16 JUDGE SIPPEL: And it is true, in fact,
17 that Normandy Broadcasting does own or control Station
18 WWSC-AM? Yes?

19 MR. LYNCH: Yes, Your Honor.

20 JUDGE SIPPEL: You're nodding. You're
21 going to have to answer.

22 MR. LYNCH: Sorry.

23 JUDGE SIPPEL: And that you have no
24 intention of divesting it?

25 MR. LYNCH: That would not be a

1 straightforward, honest statement.

2 JUDGE SIPPEL: Well, is there anything in
3 the record to show that you've made a divestiture
4 pledge?

5 MR. LYNCH: That's a different -- No,
6 there is not, Your Honor.

7 JUDGE SIPPEL: All right.

8 Is there any objection by Normandy for
9 receiving it into evidence at this time?

10 MR. LYNCH: Again, I've never seen -- you
11 know -- I don't believe we should be allowed to put in
12 stuff after the cut-off date. Believe it's a fairly
13 substantial point in this. He hinges a lot of his case
14 on it. And the idea of just surprising me this
15 morning, I don't think that was the intent from our
16 last -- you know -- from the last sit-down by the
17 telephone.

18 JUDGE SIPPEL: Well, there's going to be
19 some -- you know -- you'll find out as you go down the
20 road on a case like this, I mean, this is -- it does
21 come out to be in a two-way street. And to stand on
22 too many technicalities isn't going to really advance
23 the case.

24 What Mr. Tillotson is saying is is that
25 he's responding to something that I require. I require

1 documents to be marked and put in the record -- this
2 hearing record -- even though they might technically be
3 called "official documents," of which official notice
4 can be taken. The reason being, I like the record to
5 be a unified composite of everything that's relied upon
6 and not have to trace things back into filings and that
7 type of thing -- to the extent that this is feasible.
8 This is how I like to do it. So he's responding to
9 some -- the manner in which I like to see a record
10 made.

11 This is not a document that you're unaware
12 of, is it?

13 MR. LYNCH: Not at all.

14 JUDGE SIPPEL: No, I wouldn't think so.

15 MR. LYNCH: Well, the second page, I'm not
16 aware of; but the first page --

17 JUDGE SIPPEL: Where does the second --
18 what's the source of the second page, Mr. Tillotson?

19 MR. TILLOTSON: The second page -- is the
20 Commission's FAIR Report. I don't know exactly what
21 that stands for. It's the thing in the Public
22 Reference Room that's the updated listing of all
23 applications, licenses and the status of the same.
24 It's a basic data base as to what every licensee in the
25 -- you know -- in the Commission's data base has in the

1 way of pending applications, renewals granted. The
2 license expiration date is shown on there, the name of
3 the licensee is identified.

4 Because the license itself was issued --
5 the last license was issued in 1984 and the FAIR Report
6 reflects the transactions, assignments of license
7 renewals and who the licensee is since then.

8 JUDGE SIPPEL: Is it available to the
9 public?

10 MR. TILLOTSON: This is from the -- yes,
11 exactly. This is the FCC's Official Public Reference
12 Room --

13 JUDGE SIPPEL: Now --

14 MR. TILLOTSON: -- printout.

15 JUDGE SIPPEL: There's a reference here to
16 Normandy Broadcasting Corp.

17 MR. TILLOTSON: That's correct. That's
18 the licensee of WWSC and that's Mr. Lynch's company.

19 JUDGE SIPPEL: And these other ones don't
20 mean anything --

21 MR. TILLOTSON: Oh, the only one that's
22 relevant here is WWSC. You see the call letters --
23 What they do, it's an alphabetical listing.

24 JUDGE SIPPEL: All right.

25 MR. TILLOTSON: This is -- page of the

1 alphabetical listing which reflects the renewal
2 history. If you see, there are three 'r's, each of
3 which is the 1981 to 1984 --

4 JUDGE SIPPEL: I see. You're responsive.
5 Don't get over-responsive.

6 MR. TILLOTSON: Okay.

7 JUDGE SIPPEL: What I'm going to require
8 is that you block out everything that's not pertaining
9 to Normandy on that page.

10 MR. TILLOTSON: Okay. We can probably do
11 that --

12 JUDGE SIPPEL: And --

13 MR. TILLOTSON: -- by -- you know -- just
14 so indicating that the only thing that's relevant is
15 the --

16 JUDGE SIPPEL: No, no, no, no, no.

17 MR. TILLOTSON: Oh --

18 JUDGE SIPPEL: You don't hear what I'm
19 saying. You don't hear what I'm saying.

20 MR. TILLOTSON: Yes.

21 JUDGE SIPPEL: We come this afternoon, you
22 can bring another sheet in that has everything -- you
23 can do it with a photocopy machine, just mask out
24 everything on that page that doesn't pertain to
25 Normandy Broadcasting.

1 MR. TILLOTSON: Okay.

2 JUDGE SIPPEL: But leave the title at the
3 top --

4 MR. TILLOTSON: Okay.

5 JUDGE SIPPEL: Mr. Schonman, do you have
6 any objection to this?

7 MR. SCHONMAN: None, Your Honor.

8 JUDGE SIPPEL: All right. To the extent
9 that there are objections, I'm overruling them. Mr.
10 Tillotson has my instructions with respect to the
11 second page; but -- and I will give him leave to
12 withdraw the second page for the purpose of
13 substituting a version as I've instructed.

14 And I'm receiving into evidence -- Well,
15 let me be sure the record is clear. I am having marked
16 for identification at this time the two-page document
17 that's described by Mr. Tillotson which relates to the
18 license of WWSC-AM and I am receiving it into evidence
19 at this time, a two-page document, as Brandt Exhibit
20 No. 2.

21 (The item referred to
22 was marked for
23 identification as
24 Brandt Exhibit No. 2
25 and was received in

1 evidence.)

2 JUDGE SIPPEL: Does that conclude the --
3 does that conclude the -- of Mr. Brandt, as far as
4 documents are concerned?

5 MR. TILLOTSON: Yes, it does, Your Honor.

6 JUDGE SIPPEL: All right.

7 The Bureau has represented that it has no
8 documentary evidence to offer, is that correct?

9 MR. SCHONMAN: That's correct, Your Honor.

10 JUDGE SIPPEL: Then, we can move right
11 into Mr. Lynch and Normandy Broadcasting.

12 Now, I'm going to make another -- go out
13 on a limb one more time on a preliminary statement and
14 say that as I see it on these Exhibits -- the way Mr.
15 Lynch has set it up, he's got 10 categories tabbed
16 here; and at my instruction he also resubmitted the
17 individual pages with individual numbers given to them
18 that tie in with the Exhibit tabs.

19 Let me start off with Exhibit 1, which is
20 corporate structure.

21 What I'm trying to do is go to those
22 documents which appear to me to facilitate moving in
23 very rapidly and see if I can dispose of those first.

24 Is there going to be any objection to
25 Exhibit 1, any argument on that?